

REMARKS

Applicants acknowledge receipt of the Examiner's Office Action dated December 31, 2008.

Claims 1, 4-13, 15, 18-16, 30, 31 and 33 are pending in the application.

Claims 1, 4-13, 15, 18-16, 30, 31 and 33 stand rejected.

Claims 1, 15, and 33 have been amended.

Rejection of Claims Under 35 U.S.C. § 112

Claims 1, 15, and 33 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for allegedly failing to particularly point out and distinctly claim the subject matter which applicant regards to as the invention. Specifically, page 2 of the Office Action asserts that the limitation of "the first and second data volumes are contemporaneous primary data volumes" is indefinite. However, Applicants respectfully disagree. Applicants have removed the aforementioned limitation, thus rendering the rejection moot. Thus, Applicants respectfully request that the rejection be withdrawn.

Rejection of Claims Under 35 U.S.C. § 102

Claims 1, 9, 15, 23, and 33 are rejected under 35 U.S.C. 102(e) as being anticipated by Eshel et al., U.S. Publication No. 2003/0158862 (Eshel). While not conceding that the cited reference qualifies as prior art, but instead of expedite prosecution, Applicants have chosen to respectfully disagree and traverse the rejection as follows. Applicants reserve the right, for example, in a continuing application, to establish that the cited reference, or other references cited now or hereafter, do not

qualify as prior art as to an invention embodiment previously, currently, or subsequently claimed.

Applicants respectfully submit that “[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegell Bros. v. Union Oil of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Applicants also respectfully submit that Eshel fails to disclose the limitations of amended Claims 1, 15, and 33.

For example, nothing in Eshel discloses (or renders obvious) “the first data volume is a first primary volume, the first data volume is stored on one or more disk drives, the second data volume is a second primary volume, the second data volume is stored on one or more disk drives,” as recited in amended Claims 1, 15, and 33. Support for the amendments can be found in at least paragraph [0008] of the present Specification. In the “response to arguments” section on page 31 of the Office Action, the present Office Action appears to be analogizing Eshel’s original (source) file system to the claimed “first data volume” and Eshel’s tape to the claimed “second data volume.” However, amended independent Claims 1, 15, and 33 clearly recite that “the first data volume is stored on one or more disk drives” and “the second data volume is stored on one or more disk drives.” Eshel’s tape clearly does not disclose the claimed “disk drives.” Thus, independent Claims 1, 15, and 33, and all claims dependent therefrom are patentable over Eshel since the cited passages of Eshel fail to disclose the limitations of independent Claims 1, 15, and 33. Applicants respectfully request that the rejections be withdrawn.

Rejection of Claims Under 35 U.S.C. § 103

Claims 4-5, 8, 10-12, 18-19, 22, and 24-25 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Eshel et al., U.S. Publication No. 2003/0158862 (Eshel) as applied to Claims 1, 9, 15, 23, and 33 above, and in view of Veritas (Article entitled “Veritas Flashsnap Point-In-Time Copy Solutions,” dated 6/24/2002). While not conceding that the cited references qualify as prior art, but instead of expedite prosecution, Applicants have chosen to respectfully disagree and traverse the rejection as follows. Applicants reserve the right, for example, in a continuing application, to establish that the cited references, or other references cited now or hereafter, do not qualify as prior art as to an invention embodiment previously, currently, or subsequently claimed. Applicants respectfully submit that Veritas is not cited as disclosing any of the elements of independent Claims 1 and 15. Thus, Claims 4-5, 9, 10-12, 18-19, and 24-25 are patentable over the cited passages of Eshel and Veritas, taken alone or in any permissible combination, by virtue of their dependency on independent Claims 1 and 15. Applicants respectfully request that the rejections be withdrawn.

Claims 6-7, 13, 20-21 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eshel et al., U.S. Publication No. 2003/0158862 (Eshel) as applied to Claims 1, 9, 15, 23, and 33 above, and in view of Veritas (Article entitled “Veritas Flashsnap Point-In-Time Copy Solutions,” dated 6/24/2002) as applied to claims 4-5, 8, 10-12, 18-19, 22, and 24-25 and further in view of DeKoning, U.S. Patent No. 6,691,245 (DeKoning). While not conceding that the cited references qualify as prior art, but

instead of expedite prosecution, Applicants have chosen to respectfully disagree and traverse the rejection as follows. Applicants reserve the right, for example, in a continuing application, to establish that the cited references, or other references cited now or hereafter, do not qualify as prior art as to an invention embodiment previously, currently, or subsequently claimed. Applicants respectfully submit that DeKoning also is not cited as disclosing any of the elements of independent Claims 1 and 15. Thus, Claims 6-7, 13, 20-21 and 26 are patentable over the cited passages of Eshel, Veritas, and DeKoning, taken alone or in any permissible combination, by virtue of their dependency on independent Claims 1 and 15. Applicants respectfully request that the rejections be withdrawn.

Claims 30-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eshel et al., U.S. Publication No. 2003/0158862 (Eshel) as applied to Claims 1, 9, 15, 23, and 33 above, and in view of Veritas (Article entitled "Veritas Flashsnap Point-In-Time Copy Solutions," dated 6/24/2002) as applied to Claims 4-5, 8, 10-12, 18-19, 22, and 24-25 and further in view of Rand, U.S. Publication No. 2005/0108302 (Rand). While not conceding that the cited references qualify as prior art, but instead of expedite prosecution, Applicants have chosen to respectfully disagree and traverse the rejection as follows. Applicants reserve the right, for example, in a continuing application, to establish that the cited references, or other references cited now or hereafter, do not qualify as prior art as to an invention embodiment previously, currently, or subsequently claimed. Applicants respectfully submit that Rand also is not cited as disclosing any of the elements of independent Claims 1 and 15. Thus, Claims 30-31 are patentable over the cited passages of Eshel, Veritas, and Rand, taken alone or in any permissible

combination, by virtue of their dependency on independent Claims 1 and 15. Applicants respectfully request that the rejections be withdrawn.

CONCLUSION

In view of the amendments and remarks set forth herein, the application and the claims therein are believed to be in condition for allowance without any further examination and a notice to that effect is solicited. Nonetheless, should any issues remain that might be subject to resolution through a telephonic interview, the Examiner is invited to telephone the undersigned.

If any extensions of time under 37 C.F.R. § 1.136(a) are required in order for this submission to be considered timely, Applicant hereby petitions for such extensions. Applicant also hereby authorizes that any fees due for such extensions or any other fee associated with this submission, as specified in 37 C.F.R. § 1.16 or § 1.17, be charged to Deposit Account 502306.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Eric A. Stephenson', with a long horizontal line extending to the right.

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